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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,604	03/01/2004	Robert W. Johnson JR.	9060-221	9585

101681 7590 12/19/2011
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EXAMINER

DEBERADINIS, ROBERT L

ART UNIT	PAPER NUMBER
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2836

MAIL DATE	DELIVERY MODE
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12/19/2011

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT W. JOHNSON JR. and DINESH SHAH

Appeal 2009-012012
Application 10/790,604
Technology Center 2800

Before ALLEN R. MacDONALD, ROBERT E. NAPPI, and
ERIC S. FRAHM, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Introduction

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1-34. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim(s)

Exemplary claims 1 and 33 under appeal read as follows:

1. An apparatus comprising:

a plurality of segment loading indicators on a power supply and configured to be electrically coupled to respective load segment outputs of the power supply, each of the segment loading indicators operative to provide an indication of a loading of the associated load segment output of the power supply.

33. A method of operating a UPS having a rear panel output and a front panel user interface, the method comprising:

providing a visual loading indication for the output on the rear panel.

Examiner's Rejections¹

The Examiner rejected claims 1-11, 13, 14, 26-31, and 34 under 35 U.S.C. § 102(e) as being anticipated by Kadoi (US 7,181,630 B2).²

The Examiner rejected claims 15-22, 24, 25, and 33 under 35 U.S.C. § 103(a) as being unpatentable over Kadoi.

¹ Separate patentability is not argued for claims 2-16 and 18-34. Particularly, contrary to the discussion at page 9 of the Appeal Brief, Appellants do not actually present substantive arguments as to the separate patentability of claims 2-16, 18-25, 27-32, and 34. *See* 37 C.F.R. § 41.37(c)(1)(vii).

² We note that dependent claim 34 is rejected under § 102 even though its independent claim 33 is rejected under § 103.

The Examiner rejected claims 12, 23, and 32 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kadoi and Engel (US 6,320,585 B1).

Appellant's Contentions

1. Appellants contend that the Examiner erred in rejecting claims 1 and 26 under 35 U.S.C. § 102(e), because:

Kadoi does not disclose or suggest "a plurality of load segment indicators on a power supply," as recited in Claim 1. For at least the same reasons, Kadoi does not disclose or suggest the similar recitations in independent Claim 26.

(App. Br. 6).

2. Also, Appellants contend that the Examiner erred in rejecting claim 17 under 35 U.S.C. § 103(a), because:

As noted in the Amendment and Response, "a loading indicator coupled to the power output and operative to provide a visual indication at the second panel" (where the power output is positioned) may provide a user with segment loading information that is proximate the power output. In this manner, a user seeking to add loads or reconfigure existing loads can use the segment loading indicator on the power supply to avoid adding a load to a load segment that may be fully or heavily loaded already. Since Kadoi neither seeks to nor provides such advantages, any motivation to modify the teachings of Kadoi appear to be gained through hindsight analysis based on Appellants' Specification.

(App. Br. 7).

3. Appellants contend that the Examiner similarly erred in rejecting claim 17 under 35 U.S.C. § 103(a), because "the modification of

Kadoi as suggested by in the Final Action would modify the operation of the claimed device.” (App. Br. 7).

4. Finally, Appellants contend that the Examiner erred in rejecting claim 17 under 35 U.S.C. § 103(a), because:

Appellants respectfully submit that the reasoning suggested in the Final Action is conclusory and assumes facts that are unsupported by the reference. The Final Action improperly reads the “operating state and setting of each of the small UPS devices” as described in Kadoi at column 1, line 60 as “the information displayed on an indicator on the UPS device where the power output is positioned.” The cited portion of the reference provides no basis for the assumption that the information is displayed at all, much less “where the power output is positioned,” as alleged in the Final Action. Further, the operating state and setting are not described in the cited portion of Kadoi to include “a loading indicator coupled to the power output and operative to provide a visual indication at the second panel of the housing of a loading of the power output,” as recited in Claim 17. For at least these reasons, Appellants respectfully submit that Claim 17 is patentable over Kadoi and request that the rejection thereof be reversed.

(App. Br. 8).

Issues on Appeal

Did the Examiner err in rejecting claims 1-34 as being anticipated or obvious because Kadoi and Engel fail to teach or suggest the argued limitations?

ANALYSIS

We have reviewed the Examiners' rejections in light of Appellants' arguments that the Examiner has erred.

We agree with Appellants' above contention 1 regarding claim 1. The Examiner acknowledges the deficiency in the § 102 rejection by arguing that "Kadoi et al. does suggest that the image file is used 'on the power supply,' to provide indication, recited in Claim 1." (Ans. 12). A reference that "suggests" rather than "teaches" a claimed limitation may render a claim unpatentable under § 103, however, such a reference does not anticipate under § 102.³

We disagree with Appellants' above contentions 2 and 3. With regard to claim 17, we adopt as our own (1) the findings and reasons for rejection set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusion reached by the Examiner.

Lastly, we see no relevance for Appellants' above contention 4. The contention of Examiner error is directed to the Examiner's "Response to Arguments" section of the Final Rejection where the Examiner describes the background art of Kadoi (col. 1, line 60). Our review of the stated rejection on appeal finds no reliance on this section of Kadoi, nor do we find that Appellants' contention indicates where such reliance exists. That the

³ We leave it to the Examiner to determine the appropriateness of a new rejection under § 103 in light of the Examiner's explicit discussion of suggestion within their § 102 analysis.

Examiner may or may not have erred in dicta has no bearing on whether the Examiner erred in the rejection on appeal.

CONCLUSIONS

(1) Appellants have established that the Examiner erred in rejecting claims 1-11, 13, 14, 26-31, and 34 as being anticipated under 35 U.S.C. § 102(e).

(2) The Examiner did not err in rejecting claims 12, 15-25, 32, and 33 as being unpatentable under 35 U.S.C. § 103(a).

DECISION

The Examiner's rejection of claims 1-11, 13, 14, 26-31, and 34 is reversed.

The Examiner's rejections of claims 12, 15-25, 32, and 33 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

msc